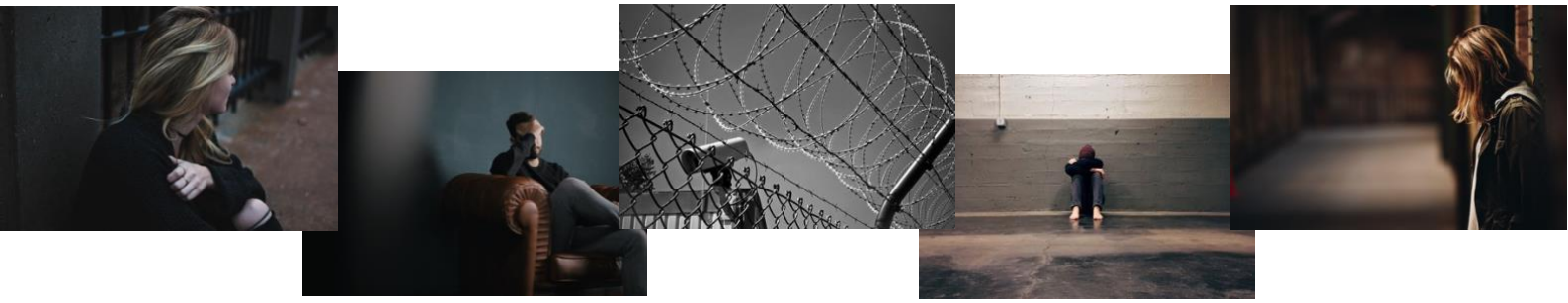

ARISA: Assessing the Risk of Isolation of Suspects and Accused

COUNTRY REPORT ON THE FACTORS AFFECTING THE SOCIAL STATUS OF SUSPECTS AND ACCUSED

BULGARIA

This document was funded by the European Union's Justice Programme (2014-2020)

Table of contents

Table of contents 1

1. Legal status of suspects and accused 2
   - *1.1. Accused persons* 2
   - *1.2. Suspects* 5
2. Custodial and non-custodial measures during proceedings 7
   - *2.1. Remand measures in criminal proceedings* 7
   - *2.2. Other procedural measures in criminal proceedings* 11
   - *2.3. Duration of measures in criminal proceedings* 12
   - *2.4. Police detention* 13
3. Disclosure of information 15
   - *3.1. Disclosure of information about criminal proceedings* 15
   - *3.2. Disclosure of information about police detention* 18
4. Legal impact of proceedings on suspects and accused 20
5. Practical impact of proceedings on suspects and accused 22
6. Assessment of the impact of proceedings by the competent authorities 26

1. Legal status of suspects and accused

1.1. Accused persons

In Bulgaria, the status of **accused persons** is governed by the Criminal Procedure Code (CPC). To become an accused person, an individual has to be formally charged by an investigative authority or by a public prosecutor. The **investigative authorities** are the police (in 2016, the police were the investigating authority in 97.3 % of all criminal cases), the investigation services (part of the public prosecution service) and the investigative inspectors of the Customs Agency. The law explicitly specifies the types of criminal offences each of these authorities should investigate (Article 194 of the CPC).

An individual can be **formally charged** at two different **stages of the criminal procedure**. As a rule, charges are brought after the criminal procedure has already started and the investigative authority has collected sufficient evidence concerning the offender's guilt. By way of exception, charges can also be brought at the beginning of the procedure, together with the very first investigative action against the alleged offender. In both cases, the investigative authority must inform the public prosecutor.

The **bringing of charges is a formal act**. It represents the **issuance of a special document called 'decree for charging the accused'** (*постановление за привличане на обвиняем*). This decree is issued in writing and must include the content listed in the law. The mandatory information, which the decree must include, is: (1) the date and place of issuance; (2) the issuing authority; (3) the full name of the charged person, the act, for which they are charged, and a reference to the respective criminal law provision incriminating this act; (4) the evidence on which the charges are based (if this would not hamper the investigation); (5) the remand measure, if such is imposed; and (6) the full list of the accused person's rights.

The investigative authority must **present the decree to the accused person** and their lawyer. During the presentation, the investigative authority must allow the accused person and their lawyer to familiarise themselves with the full content of the document, to provide additional clarifications, if necessary, and must give the accused person a copy. The accused person must certify with their signature the receipt of their copy of the decree.

For the presentation of the decree, the accused person must be **officially summoned**. The summons must be served at least three days before the presentation. Persons, who have been regularly summoned, but do not appear without a valid reason, are brought forcibly before the investigative authority.

When the alleged offender is charged at the beginning of the investigation, a decree for charging the accused is not issued, but its mandatory content must be included in the protocol for the first investigative action (Article 219 of the CPC).

The person obtains the status of an accused person from the **moment of the issuance of the decree**.

The number of accused persons has significantly decreased since 2010 (Table 1). Another important trend is the increasing share of suspended sentences, which means that an increasing number of accused persons are found guilty, but their penalty, instead of immediately executed, is postponed for a certain period of time and becomes effective only if they commit another crime during this period.

Table 1: Accused persons with proceedings finished by outcome of proceedings (2010-2016)

Outcome of proceedings	2010	2011	2012	2013	2014	2015	2016
Effective sentence	24,740	23,893	21,204	18,842	16,374	14,567	11,753
Suspended sentence	14,330	17,120	16,792	15,271	15,475	13,220	16,548
Acquittal	1,606	1,282	1,463	1,128	965	820	767
Suspension of proceedings	221	279	288	118	99	80	67
Release from penalty	6,651	4,664	4,913	4,962	4,591	4,298	4,966
Total number of accused persons with proceedings finished	47,548	47,238	44,660	40,321	37,504	32,985	34,101

Source: National Statistical Institute.

In terms of types of crimes, persons are most often accused of committing road traffic offences. In 2016, more than 27 % of all accused persons were charged for this category of crimes. The other offences, for which persons are often accused, are property crimes (usually theft), economic crimes and, since the beginning of the migration crisis, border-related crimes (illegal border crossing).

In terms of outcome of proceedings, the majority of accused persons do not end up in prison and remain in the community. In 2016, only 18.9 % of all accused persons received effective prison sentences, 48.5 % were also sentenced to imprisonment, but their sentences were suspended, 15 % were sentenced to non-custodial sanctions (probation, fine, etc.), 2.2 % were found not guilty, and 14.6 % were released from criminal responsibility (Table 2).

Table 2: Accused persons with proceedings finished by outcome of proceedings and by penalty (2010-2016)

Outcome of proceedings / imposed penalty	2014		2015		2016	
	Number	%	Number	%	Number	%
Effective imprisonment (including life imprisonment)	5,890	15.7 %	5,565	16.9 %	6,409	18.9 %
Suspended imprisonment	15,475	41.2 %	13,220	40.1 %	16,548	48.5 %
Financial fine	1,003	2.7 %	889	2.7 %	954	2.8 %
Probation	9,209	24.6 %	7,884	23.9 %	4,172	12.2 %
Other non-custodial sanction	272	0.7 %	229	0.7 %	218	0.6 %
Acquittal	965	2.6 %	820	2.5 %	767	2.2 %
Suspension of proceedings	99	0.3 %	80	0.2 %	67	0.2 %
Release from penalty	4,591	12.2 %	4,298	13.0 %	4,966	14.6 %
Total number of accused persons with proceedings finished	37,504	100 %	32,985	100 %	34,101	100 %

Source: National Statistical Institute.

A person **remains accused** until the **end of the pre-trial stage** of the proceedings. When the pre-trial investigation is completed, the investigative authority sends the file to the public prosecutor in charge of the case, who decides how to proceed. If the public prosecutor decides to abandon the case, e.g. because there is no sufficient evidence supporting the charges, the proceedings are suspended, all charges are automatically lifted and the case is closed. If the public prosecutor decides that the accused person is guilty but there are grounds for replacing the penal sanction with an administrative

one, the case is sent to the court together with a proposal for an administrative sanction. In this case, the accused person remains accused until the court accepts the proposal and issues a decision for imposing the administrative sanction. If the public prosecutor has concluded a plea-bargaining agreement with the lawyer of the accused person, the agreement is sent to the court for approval. In this case, the accused person remains accused until the court issues a decision for approving the agreement. If the public prosecutor decides to indict the accused, the case is sent to the court together with a bill of indictment (*обвинителен акт*). In this case, the accused person becomes a defendant (*подсъдим*). The defendant remains as such until the court issues its final decision.

The **law does not specify for how long a person can remain accused**. However, there are some rules on the duration of the different stages of proceedings, which can provide a general indication of the time a person can remain accused.

As a rule, the **pre-trial investigation** must be completed within **two months**. For complex cases, this deadline can be extended following a procedure laid down in the law (Article 234 of the CPC). However, since there is no definition of what a complex case is and there is no limit to the maximum number of extensions, a pre-trial investigation can last indefinitely. After the completion of the investigation, the **public prosecutor has one month to decide how to proceed** with the case. For complex cases, this deadline can be extended to two months (Article 242 of the CPC).

In certain cases, the law allows the competent authorities to carry out the so-called **'rapid proceedings'** (*бързо производство*). There are two different types of rapid proceedings (Articles 356-357 of the CPC):

- The first type is carried out when: (1) the offender is caught during or immediately after the crime, (2) there are obvious traces of the crime on the person's body or clothes, (3) the person has personally appeared before the competent authority with a confession, or (4) an eyewitness points out the offender. In such cases the **investigation must be completed within seven days** and the **prosecutor must make a decision** on how to proceed within **three days**.
- The second type is carried out upon decision of the prosecutor when the crime is punishable by up to three years of imprisonment and the victim has not died or sustained a severe injury. In these cases, the **deadline for completing the investigation is 14 days**, but, in complex cases, **the prosecutor can extend it by another 14 days**. When the investigation is over, the **prosecutor must decide on how to proceed** with the case within **seven days**.

In practice, the **majority of pre-trial proceedings** (between 74 % and 75 % for the period 2014-2016) have been **completed for up to seven months**. This includes both the investigation and the time necessary for the public prosecutor to make a decision. However, there is also a significant number of cases, in which the pre-trial proceedings have continued for a much longer period of time. In 2016, there were 4,330 pending cases, in which the alleged offender was found but the investigation had lasted for more than one year. In 566 of these cases, the proceedings had started more than five years ago.[1]

If the case goes to trial, the **first hearing** must be scheduled within **two months**. In exceptional cases or when the case is particularly complex, this **deadline can be extended** but cannot be longer than three months (Article 247a of the CPC). The first hearing can be postponed if some of the parties, whose presence is mandatory, do not show up (Article 247c of the CPC). During the first hearing, the court must check the bill of indictment for mistakes and, if such are found, the case is sent back to the prosecutor, who has **seven days** to correct it (Article 248a of the CPC). If, during the first hearing, the

[1] Public Prosecution Office of the Republic of Bulgaria (2017), Report on the enforcement of the law and the activity of the prosecution service and the investigative authorities in 2016, p. 36, www.prb.bg/media/filer_public/a6/4e/a64eace3-f2d0-4c85-9781-64e82cad9e68/godishen_doklad_na_prb_2016.pdf.

court finds that there have been procedural irregularities at the pre-trial stage, the case is sent back to the prosecutor for addressing these irregularities. The prosecutor has one month to address the irregularities and re-submit the case to the court (Article 249 of the CPC). Once the case passes the preparatory hearing stage, no mandatory deadlines apply for its completion.

The law allows the accused to file a **request for accelerating the proceedings**. At the **pre-trial stage**, this can be done when the investigation is still pending after a certain period of time since the accused person was formally charged (**two years** for serious crimes and **six months** for other crimes). The request is presented to the prosecutor, who must immediately forward the case to the court and the court must issue a decision within 15 days (Article 368 of the CPC). During the **trial**, an acceleration request can be filed if the case has been pending for more than **two years at the first instance** and for more than **one year at the second instance**. The request is submitted to the court, before which the case is pending. This court must forward the case to the respective higher court within one month and the higher court must issue a decision within seven days (Article 368a of the CPC). The procedure for accelerating the proceedings has limited practical impact, because the court can set a deadline for completing the proceedings, but this deadline is not mandatory and if it is not respected, the only consequence is the right of the accused to file a new acceleration request (Article 369 of the CPC).

According to the latest available data of the European Commission for the Efficiency of Justice (CEPEJ), in Bulgaria the **average disposition time** of first instance criminal cases has increased from 49 days in 2010, to 62 days in 2012, and to 74 days in 2014. Despite the negative trend, the average disposition time in Bulgaria is considerably shorter than both the average (133 days in 2014) and the median (111 days in 2014) for the 45 Council of Europe member states covered by the evaluation reports.[2]

According to data, published by the Supreme Judicial Council, the majority of criminal trials at the first-instance courts are finalised within three months (Table 3). Still, there is a significant number of cases, in which the proceedings take much longer. Thus, for example, at the end of 2016, 2,626 of all pending criminal cases (or almost 15 %) have started more than a year before.[3]

Table 3: Duration of criminal trials at first instance (2016)

Outcome of proceedings / imposed penalty	Completed cases		Pending cases			
	< 3 months	> 3 months	< 3 months	3-6 months	6-12 months	> 12 months
Regional courts	70,477	654	9,712	2,810	2,212	2,406
District courts	22,158	969	537	137	175	219
Military courts	776	36	26	5	3	1
Total for all courts	93,411	1,659	10,275	2,952	2,390	2,626

Source: Supreme Judicial Council.

1.2. Suspects

In Bulgaria, the **legal status of 'suspect'** does not exist. In practice, persons who are suspected of having committed a crime, but are not formally charged, are those **arrested by the police**. The police

[2] European Commission for the Efficiency of Justice (2016), European judicial systems: efficiency and quality of justice. Edition 2016 (2014 data), p. 230, www.coe.int/t/dghl/cooperation/cepej/evaluation/2016/publication/REV1/2016_1%20-%20CEPEJ%20Study%2023%20-%20General%20report%20-%20EN.pdf.

[3] Supreme Judicial Council (2017), Aggregated statistical tables for the activities of the courts in 2016, www.vss.justice.bg/root/f/upload/15/STAT_TABLICI%202016-0.pdf.

can arrest a person when there is information that that person has committed a crime. Police detention can last for **up to 24 hours**. It is not formally linked to criminal proceedings and does not require authorisation by a court. However, the arrested person can appeal before the court as regards the lawfulness of their arrest (Article 72 of the Ministry of the Interior Act).

When arresting a person, the police is obliged to issue a **written detention order**. The order includes information about the police officer issuing the document, the facts and legal grounds of detention, the name of the arrested person, the date and time of the arrest, and the rights of the arrested individual. It must be signed by both the police officer and the arrested person. If the arrested person does not wish to or cannot sign the order, the document must be countersigned by a witness (Article 74 of the Ministry of the Interior Act).

2. Custodial and non-custodial measures during proceedings

2.1. Remand measures in criminal proceedings

There are **two categories of measures** that can be imposed on accused persons during criminal proceedings: **remand measures** (*мерки за неотклонение*) and **other procedural measures** (*мерки за процесуална принуда*).

The objectives of **remand measures** are to prevent the accused person from hiding, committing another crime or hindering the execution of the penalty (Article 57 of the CPC). A remand measure can be imposed only if, based on the collected evidence, a justified assumption can be made that the accused person has committed the crime. The imposition of a remand measure is not mandatory and depends on the decision of the prosecutor and/or the investigative authority.

There are **four remand measures** listed in the law: **mandatory reporting**, **bail**, **home arrest** and **detention in custody**.[4] The competent authority can choose only one of these remand measure and is not allowed to simultaneously impose two or more of them.

Mandatory reporting (*подписка*) is the lightest remand measure. It consists of the obligation of the accused person not to leave their place of residence without permission by the respective competent authority. When an accused person is placed under mandatory reporting the competent authority, which has imposed the measure, notifies the police, which are responsible for supervising the enforcement of the measure. For any failure of the accused person to comply with the mandatory reporting obligation, the police inform the prosecutor and court (Article 60 of the CPC).

Bail (*гаранция*) is the second noncustodial remand measure. It consists of depositing money or securities. The bail can be deposited by the accused person or by a third party. The amount of the bail is specified by the authority imposing the measure taking into account the property status of the accused. The deadline for depositing the bail must be between three and fifteen days. The failure to deposit the bail on time can lead to its replacement with a heavier measure (home arrest or detention in custody).

Once deposited, the bail cannot be withdrawn. The deposited money or securities are released when the accused person is released from criminal liability, sentenced to a noncustodial penalty or detained for the execution of imprisonment (Article 61 of the CPC). If the accused person fails to appear before the respective authority without a good reason or changes their place of residence without prior notification, the deposited money or securities are seized. In this case, the competent authority can also increase the amount of the bail. (Article 66 of the CPC).

At the pre-trial stage, the accused person can **appeal against the bail** before the court. The court issues a decision without holding a hearing. This decision is final and cannot be further contested by the accused (Article 61 of the CPC).

Home arrest (*домашен арест*) consists of prohibiting the accused from leaving their home without the permission of the relevant authority. When the accused is placed under home arrest, the authority which has imposed the measure notifies the police who are responsible for supervising its enforcement. Persons under home arrest can also be controlled by electronic monitoring. The police inform the prosecutor and court about any failure of the accused to comply with the ban. The duration

[4] Mandatory reporting, bail and home arrest can be imposed only on adults (persons over 18 years of age). For juveniles (persons between 14 and 18 years of age), the applicable remand measures are different and include supervision by the parents or guardians, supervision by the personnel of the educational institution, in which the juvenile is accommodated, and supervision by the local body, responsible for taking care of children with anti-social behaviour. Juveniles can be detained in custody, but only in exceptional cases (Article 386 of the CPC).

of home arrest is limited by law. At the pre-trial stage, it can last up to one year and six months for crimes punishable by a minimum of 15 years of imprisonment or a heavier sanction, up to eight months for another serious intentional crime, and two months for any other crime (Article 62 of the CPC). There are no limits for the duration of home arrest during the trial.

In practice, **home arrest is rarely used** in criminal proceedings. In 2016, 263 persons have been placed under home arrest, which is a slight increase compared to 2015 (232 persons) and 2014 (235 persons).[5]

Detention in custody (*задържане под стража*) is the heaviest remand measure. It can be imposed only when the crime, for which the person is charged is punishable by imprisonment or a heavier sanction, and the collected evidence shows that that there is a real danger that the accused may hide or commit another crime.[6] When this danger is no longer present, detention must be repealed or replaced by a lighter measure and the detained person must be released from custody. Detention in custody is subject to the same restrictions in terms of time limits as the home arrest (Article 63 of the CPC).

Detention in custody is imposed relatively often. During the last three years, its use has been constantly increasing (from 3,223 in 2014, to 3,389 in 2015, to 3,475 in 2016) despite the overall decrease of the number of criminal cases and accused persons during the same period.[7]

Custodial measures (home arrest and detention in custody) are subject to **judicial control**. At any time during the pre-trial stage, the accused and their lawyer can file a request to the court for changing the imposed measure. The court must hold a hearing within three days after the receipt of the request. If the measure is confirmed, the court can restrict the filing of further requests for a certain period of time. This period cannot be longer than two months and does not apply if the new request is justified by deteriorating state of health of the accused (Article 65 of the CPC).

Detainees are accommodated in **special detention facilities** called **'arrests'** (*apecmu*). All arrests are under the management of the General Directorate on Execution of Penalties of the Ministry of Justice. As of the end of 2016, the total number of arrests in Bulgaria was 33: two in the capital city Sofia, one in each of the 26 administrative districts' main cities and five in smaller towns (Table 4).[8]

Until 2015, all arrests were operating as separate facilities. Since then, however, six arrests were moved to the premises of local prisons.

[5] Public Prosecution Office of the Republic of Bulgaria (2017), Report on the enforcement of the law and the activity of the prosecution service and the investigative authorities in 2016, p. 46, www.prb.bg/media/filer_public/a6/4e/a64eace3-f2d0-4c85-9781-64e82cad9e68/godishen_doklad_na_prb_2016.pdf.

[6] The law lists four options, when, unless otherwise indicated by the evidence, it is assumed that there is real danger for the accused person to hide or commit another crime. These are when: (1) the accused person has been charged for re-offending, (2) the accused person has been charged for a serious intentional crime (a crime punishable by a minimum of five years of imprisonment) after been sentenced to imprisonment of at least one year for another serious crime, (3) the accused person has been charged for a crime punished by a minimum of ten years of imprisonment, or (4) the charges has been brought in the absence of the accused person (Article 63 of the CPC).

[7] Public Prosecution Office of the Republic of Bulgaria (2017), Report on the enforcement of the law and the activity of the prosecution service and the investigative authorities in 2016, p. 46, www.prb.bg/media/filer_public/a6/4e/a64eace3-f2d0-4c85-9781-64e82cad9e68/godishen_doklad_na_prb_2016.pdf.

[8] Public Prosecution Office of the Republic of Bulgaria (2017), Report on the enforcement of the law and the activity of the prosecution service and the investigative authorities in 2016, p. 46, www.prb.bg/media/filer_public/a6/4e/a64eace3-f2d0-4c85-9781-64e82cad9e68/godishen_doklad_na_prb_2016.pdf.

Table 4: Capacity, conditions and number of detainees in Bulgarian arrests (15 December 2016)[9]

No	Investigation detention facility	Cells	Living area (m^2)	Capacity (4 m^2)	Total surface (m^2)	Number of detainees	Access to natural light	Ventilation in the cells and the corridors	Air conditioning system	Walking area	Medical care	Sanitary facility
1.	Blagoevgrad	10	95	16	225	26	Yes	Yes	Yes	Closed type	Yes	Common
2.	Razlog	4	38	4	60	5	Yes	Yes	-	Yes	Yes	Common
3.	Sandanski	4	31	4	96	12	Yes	Yes	Yes	Yes	Yes	Common
4.	Varna	19	264	59	557	26	Yes	Yes	Yes	Closed type	Yes	Yes, in each premise
5.	Veliko Tarnovo	11	88	22	248,67	21	-	Yes	Yes	Closed type	Yes	Common
6.	Vidin	10	96	23	398	17	Yes	Yes	Yes	Closed type	Yes	Common
7.	Gabrovo	6	58,71	13	147	12	From the corridor	From the corridor	Yes	Yes	Yes	Common
8.	Dobrich	13	117,64	14	225,12	41	-	Yes	Yes	-	Yes	Common
9.	Kardzhali	11	58,28	12	163,42	6	-	Yes	Yes	Closed type	Yes	Common
10.	Kyustendil	11	80,57	15	274	5	Yes	Yes	Yes	Yes	Yes	Common
11.	Dupnitsa	8	28,16	8	98	7	-	Yes	-	Yes	Yes	Common
12.	Montana	14	437	23	437	5	Yes	Yes	-	Yes	Yes	Common
13.	Pazardzhik	14	140	30	526	17	Yes	Yes	-	Closed type	Yes	Common
14.	Pernik	9	45,26	10	101	11	Yes	Yes	Yes	Yes-2	Yes	Common
15.	Plovdiv	60	787	180	2450	116	Yes	Yes	Yes	Yes-3	Yes	Yes, in each premise
16.	Razgrad	15	185,5	38	213,3	18	Yes	Yes	-	-	Yes	Yes, in each premise
17.	Ruse	23	187,7	32	1335,3	54	Yes	Yes	Yes	Closed type	Yes	Yes, in each premise
18.	Silistra	9	53,8	12	182,3	11	-	Yes	Yes	Yes	Yes	Common
19.	Sliven	11	72,6	20	180	22	-	-	Yes	-	Yes	Common
20.	Stara Zagora	16	161,8	29	452	36	Yes	Yes	Yes	Closed type	Yes	Common
21.	Kazanlak	7	50,4	7	116,1	0	Yes	-	Yes	-	Yes	Common
22.	Targovishte	15	107,15	20	177,6	11	Yes	Yes	Yes	Closed type	Yes	Yes, in each premise
23.	Haskovo	19	170,1	38	490,87	57	-	Yes	-	Closed type	Yes	Yes, in each premise
24.	Svilengrad	5	36,55	5	89,05	16	-	Yes	-	-	Yes	Common
25.	Shumen	14	156	57	238,48	19	Yes	Yes	Yes	Yes	Yes	Yes, in each premise
26.	Yambol	14	91,66	22	127,66	19	Yes	Yes	Yes	-	Yes	Common
27.	Elhovo	14	192	48	235,4	7	Yes	Yes	Yes	Yes	Yes	Yes, except the isolation cell

[9] The arrests were placed under the management of the Ministry of Justice in 1998. At that time, their number was 89. Since then, many arrests were closed.

28.	Sofia: G. M. Dimitrov 42	83	1308	249	3331	243	Yes	Yes	-	Yes-7	Yes	Yes, in each premise
29.	Sofia: Major Vekilski 2	28	440	80	2994	87	Yes	Yes	Yes	Yes-3	Yes	5 without, 23 with
	TOTAL	**477**		**1090**		**979**						

Source: Ministry of Justice.

In the arrests, detainees are placed in **permanently locked cells**. Detainees placed in prisons can be accommodated in cells, which are locked only during the night (Article 269 of the Rules on the Implementation of the Execution of Penalties and Detention in Custody Act).

The **contacts of detainees with the outside world** are restricted. As a rule, detainees can be **visited** by other persons at least twice a month. Each visit can last up to 40 minutes and must take place under the supervision of a guard. Detainees can be visited by a maximum of four persons at a time, but this restriction does not apply to the accused person's spouse, parents, children, grandparents, grandchildren, brothers and sisters (Article 276 of the Rules on the Implementation of the Execution of Penalties and Detention in Custody Act).

Detainees can send and receive **correspondence** without restriction. The written content of the correspondence cannot be checked by the personnel of the detention facility (Article 276 of the Rules on the Implementation of the Execution of Penalties and Detention in Custody Act).

Detainees can make **phone calls** with their relatives and other close persons, but are not allowed to have their own mobile phones (Article 256 of the Execution of Penalties and Detention in Custody Act and Article 286 of the Rules on the Implementation of the Execution of Penalties and Detention in Custody Act).

The prosecutor or the court can **forbid the communication of detainees with certain persons**, if this is necessary for solving or preventing a serious crime. The ban applies to visits, correspondence and phone calls but excludes the accused person's spouse, parents, children, grandparents, grandchildren, brothers and sisters (Article 256 of the Execution of Penalties and Detention in Custody Act).

The competent authorities are not obliged to take into account the accused person's place of residence when they decide in which detention facility they should be placed. The general rule is that detainees must be placed in the facility located in the **same region, where the pre-trial investigation or the trial takes place** or, when this is not possible, in the closest available facility (Article 241 of the Execution of Penalties and Detention in Custody Act). As an exception, detainees can also be placed in a prison, which is located in the same region (Article 241 of the Execution of Penalties and Detention in Custody Act). According to the law, the region, where the pre-trial investigation and the trial take place, is the **region, where the crime has been committed**. This means, that if the detained person does not live in the same region, where the crime has been committed, they will not be placed in the closest facility to where they live, but in the closest facility to where the crime scene was.

There are only a few exceptions to this rule. At the pre-trial stage, the prosecutor can decide to perform the investigation in the region, where the accused person lives, when this would ensure the fastness, objectivity, comprehensiveness and completeness of the investigation or when the person has been charged for several crimes committed in different locations. The Prosecutor General can also transfer the pre-trial proceedings to another region in order to ensure a more comprehensive investigation (Article 195 of the CPC).

If the case goes to court, the trial must take place either in the region, where the crime has been committed, or in the region, where the pre-trial investigation has been performed (Article 36 of the CPC).

There are **mandatory factors**, which the competent authority must take into account before **choosing which remand measure to apply**. Two of them, the gravity of the crime and the evidence against the

accused person, are directly related to the crime. The rest are related to the personality of the accused. These include the accused person's health status, family status, occupation, age and, as defined by the law, any other information about the personality of the accused (Article 56 of the CPC).

The **authorities imposing the remand measures** are the **prosecutor**, the **investigative authority** and the **court**. As a rule, the prosecutor and the investigative authority can impose only noncustodial measures (mandatory reporting or bail) during the pre-trial stage of the proceedings. Custodial measures at the pre-trial stage can be imposed only by the court. During the trial, remand measures are always imposed by the court. By way of exception, the prosecutor can impose detention in custody during the pre-trial stage for **up to 72 hours** to ensure that the accused person will appear before the court (Article 64 of the CPC).

The decision for imposing a remand measure must include information about the time and place of issue, the issuing authority, the case, the full name of the accused, the crime, for which the accused is charged, and a justification of the imposed measure. The **decision is handled to the accused**, who undertakes the obligation not to change their place of residence without informing in writing the relevant authority about their new address (Article 59 of the CPC).

For **non-custodial measures**, there is **no obligation** for the competent authority **to hear the suspect or accused**, or any other participant in the proceedings, before imposing the measure. For **custodial measures** (home arrest and detention in custody), the **court is obliged to hold a hearing** before imposing the measure. The hearing takes place with the participation of the public prosecutor, the accused and their lawyer (Article 64 of the CPC).

2.2. Other procedural measures in criminal proceedings

Other procedural measures which can be imposed on the accused include measures for the protection of the victim, ban to leave the country, temporary suspension from work, temporary revocation of a driving license, accommodation in a psychiatric establishment, coercive escort, and measures for securing the payment of compensation, financial sanctions and judicial expenses.

The **measures for protecting the victim** include different **bans** for preventing the accused from getting in contact with the victim. The accused can be banned from getting into immediate proximity with the victim, contacting the victim (including by phone, mail, e-mail or fax) or visiting certain localities, regions or places, in which the victim resides or visits. These measures can be imposed only by the court, either upon request by the victim or upon proposal by the prosecutor with the victim's consent. The court is obliged to hold a hearing and consult the prosecutor, the accused and the victim. The measures apply until the end of the proceedings unless otherwise requested by the victim (Article 67 of the CPC). If the accused fails to comply with the imposed restrictions, the competent authority can impose a remand measure or replace the already imposed remand measure with a heavier one (Article 68a of the CPC).

The **ban for leaving the country** can be imposed only on persons accused of a serious intentional crime or a crime which has resulted in someone's death. The measure is imposed by a prosecutor who must immediately inform the police. The accused can travel abroad only with the permission of the prosecutor. The prosecutor is obliged to respond to requests for permission within three days. If permission is not granted the accused can appeal against the prosecutor's decision before the court. The accused person can also request the court to repeal the measure in general (Article 68 of the CPC). If the accused violates the imposed ban, the competent authority is authorised to impose a remand measure or replace the already imposed remand measure with a heavier one (Article 68a of the CPC).

Temporary suspension from work can be imposed only on accused persons, who have been charged with a serious intentional crime, committed in relation with their job, and only when there are sufficient grounds to believe that their position would hamper the performance of a full, objective

and comprehensive investigation. Suspension from work is imposed by the court upon request by the prosecutor. The court is obliged to hold a hearing and consult both the prosecutor and the accused. The accused can appeal the imposed measure before the higher court. Temporary suspension from work can last until the end of the proceedings. However, if the circumstances justifying the imposition of the measure cease to exist, the measure can be repealed earlier by the court upon request of the accused, or by the prosecutor upon their own initiative (Article 69 of the CPC).

Temporary revocation of a driving license can be imposed only for transport-related crimes, which have resulted in the death or injury of a person, and for the so-called traffic hooliganism (*хулиганство при управление на моторно превозно средство*). The measure is imposed by the prosecutor and can be appealed by the accused person before the court. The temporary revocation of a driving license can last until the end of proceedings, but can be repealed earlier by the court upon request of the accused, or by the prosecutor upon their own initiative, if the justifying circumstances cease to exist (Article 69a of the CPC).

Accommodation in a psychiatric establishment is the only procedural measure of custodial nature. It is always imposed by the court. At the pre-trial stage of proceedings, this is done upon request by the prosecutor, while during the trial, the court can impose it upon its initiative or upon request by the parties to the case. The accused can be accommodated for examination in a psychiatric establishment for a maximum of 30 days. The court is obliged to hold a hearing and consult the accused person and a psychiatrist. The court decision can be appealed by the accused before the higher court. If the duration of the accommodation, specified by the court, appears insufficient, it can be prolonged by the court only once, by a maximum of 30 days, following the same procedure. The time spent by the accused person in the psychiatric establishment counts for detention in custody (Article 70 of the CPC).

Coercive escort (*принудително довеждане*) is applied when the accused person does not show up for interrogation without valid reasons. The measure is applied by the police or the respective services of the Ministry of Justice or the Ministry of Defence (Article 71 of the CPC).

The **measures for securing the payment of compensation, financial sanctions and judicial expenses** are aimed at blocking certain resources belonging to the accused person (usually property or money), so that they could be used after the end of the proceedings if the accused person is sentenced to a financial sanction or measure (fine, confiscation or seizure of assets) and/or sentenced to pay compensation to the victim or cover the judicial expenses related to the case. These measures are always imposed by the court upon request by the prosecutor or the victim (Articles 72, 73 and 73a of the CPC).[10]

2.3. Duration of measures in criminal proceedings

The law sets specific time limits for the different measures imposed on the accused persons during the proceedings.

At the **pre-trial stage**, any measure imposed on the accused person cannot last more than **one year and six months** for a serious crime (a crime punishable by a minimum of five years of imprisonment) and **eight months** for any other crime. When these time limits expire, the prosecutor must repeal the imposed measures. If the public prosecutor fails to do so, the court can repeal the measures upon request by the accused or their lawyer (Articles 234 of the CPC). In practice, there is a significant number of cases where the measures imposed on the accused are repealed before the end of the

[10] Measures for securing the payment of financial sanctions or measures can be requested by the prosecutor, measures for securing the payment of compensation can be requested by the victim, and measures for securing the payment of judicial expenses can be requested by the prosecutor and/or the victim (Articles 72, 73 and 73a of the CPC).

investigation because of expired time limits. In 2016, there were 642 cases, in which such measures were repealed by the prosecutor, and 32 cases, in which they were repealed by the court.[11]

In addition to the general rules, there are **special rules** on the **duration of custodial measures** (home arrest and detention in custody). At the pre-trial stage of proceedings, these custodial measures can last up to one year and six months for crimes punishable by a minimum of 15 years of imprisonment or a heavier sanction, up to eight months for another serious intentional crime, and two months for any other crime (Articles 62 and 63 of the CPC).

At the end of 2016, out of the total number of 918 persons detained in custody, 473 persons were detained for two months, 383 persons – for eight months, and 62 persons – for 18 months.[12]

When the case goes to **trial**, the court, during the preparatory hearing has to decide whether to keep, change or repeal the measures imposed during the pre-trial proceedings (Article 248 of the CPC). In the course of the trial, the imposed measures can be reviewed at any time by the court. However, requests related to the imposed measures can be made only when the relevant circumstances have changed (Article 270 of the CPC). At the **end of the trial** before the first-instance court, together with issuing the sentence, the **court decides on the remand measures**.

When the trial concludes with a prison sentence which is not suspended and there is a risk that the defendant can hide, the court is authorised to replace the imposed remand measure with a heavier one or impose a remand measure if such has not been imposed so far.[13] When the defendant is acquitted, release from criminal responsibility or sentenced to noncustodial sanction (including suspended prison sentence) the court is obliged to either repeal the imposed remand measure or replace it with the lightest one (Article 309 of the CPC). There are no specific provisions in the law governing the application of remand measures and other procedural measures during the appeal proceedings before the courts of second and third instance.

2.4. Police detention

Police detention of persons, suspected of having committed a crime, is **not part of the criminal proceedings**. It is imposed by the police and can last for up to **24 hours**. The 24-hour period starts running from the moment the person is detained. The exact time of the detention is indicated on the detention order, irrespective of when the order is formally issued (Article 13 of Instruction No 8121з-78).

The arrested person must be immediately released when the reason for detention is no longer present or when the 24-hour period expires. Arrested persons, who are to be formally charged, are released immediately before the charges are brought against them (Article 27 of Instruction No 8121з-78).

The rules, governing the **contacts of the arrested persons with the outside world** are relatively restrictive. Detainees can be visited by their relatives with the written permission of the responsible police officer. During these visits, detainees can meet with their visitors only in the presence of a guard (Article 43 of Instruction No 8121з-78).

[11] Public Prosecution Office of the Republic of Bulgaria (2017), Report on the enforcement of the law and the activity of the prosecution service and the investigative authorities in 2016, p. 46, www.prb.bg/media/filer_public/a6/4e/a64eace3-f2d0-4c85-9781-64e82cad9e68/godishen_doklad_na_prb_2016.pdf.

[12] Public Prosecution Office of the Republic of Bulgaria (2017), Report on the enforcement of the law and the activity of the prosecution service and the investigative authorities in 2016, p. 46, www.prb.bg/media/filer_public/a6/4e/a64eace3-f2d0-4c85-9781-64e82cad9e68/godishen_doklad_na_prb_2016.pdf.

[13] Unless otherwise indicated by the evidence on the case, it is presumed that a risk of hiding always exists, if the defendant is sentenced to imprisonment of more than ten years (Articles 309 of the CPC).

Detainees can be visited by their lawyers and, if they are other country nationals, by a representative of the respective diplomatic mission, at any time, but the officer on duty in the place of detention must be informed in advance (Article 29 of Instruction No 8121з-78).

Persons detained by the police are accommodated in special premises of the Ministry of the Interior.

3. Disclosure of information

3.1. Disclosure of information about criminal proceedings

The legal rules governing the disclosure of information about the proceedings differ substantially at the pre-trial stage and during the trial.

As a rule, the **pre-trial stage** is considered confidential and therefore the **rules for disclosing information are much stricter**. Information about the investigation at this stage can be disclosed only with the permission of the prosecutor in charge of the case. Where necessary, the investigative authority must warn all persons, who are present during an investigative action (such as, for example, search of premises or questioning of witnesses) that they are not allowed to disclose any information related to the case. The warning is given in writing and must be signed by the person to whom it is addressed. Unauthorised disclosure of information can even lead to criminal prosecution.[14]

There are special provisions governing the **disclosure of information** when the accused person is **detained in custody**. According to the Criminal Procedure Code, when the accused person is detained, the competent authority **must inform immediately** the family, the employer (unless the accused declares they do not wish their employer to be informed) and the Ministry of Foreign Affairs (when the accused person is another country national) (Article 63 of the CPC). The Execution of Penalties and Detention in Custody Act, however, offers a different set of rules. According to this law, all detainees **have the right to immediately inform** their family or close ones, but they are free not to do so. In the latter case, the detainee must sign a declaration and, when such a declaration is signed, the administration of the detention facility is not allowed to inform anyone about the detention. According to the same law, other country nationals are entitled to notify the embassy or consulate of their country (Article 243 of the Execution of Penalties and Detention in Custody Act).

If the detained person is a **juvenile** (a person between 14 and 18 years of age), a **notification** about their detention must be immediately sent to their **parents or guardians** and, if the person is a student, to the **headmaster** of the respective school (Article 386 of the CPC).

For some **categories of persons** there are **special rules for disclosing information**. Thus, for example, when a public official from the Ministry of the Interior is formally charged for intentional crime, a notification is immediately sent to the Minister of the Interior (Article 149 of the Ministry of the Interior Act). When a private enforcement agent is arrested or formally charged, a notification is sent to the Minister of Justice and the Council of the Chamber of Private Enforcement Agents (Article 14 of the Private Enforcement Agents Act). When a notary public is arrested or formally charged, a notification is sent to the Minister of Justice and the Council of the Notary Chamber (Article 17 of the Notaries Public and Notarial Practice Act). When an official of the State Intelligence Agency is arrested or formally charged, a notification is sent to the chairperson of the Agency (Article 40 of the State Intelligence Agency Act).

During a **trial**, the disclosure of information is **less restricted**. As a rule, **trials are public** and everyone, including the media, can attend the court hearings. Publicity of hearings can be restricted only in special cases, e.g. when this is necessary for protecting a state secret, safeguarding morality, or preventing the disclosure of facts about the intimate life of citizens. A hearing can also be closed to the public when a child witness (a witness under 18 years of age) is questioned (Article 263 of the CPC). At the same time, **access to any other information**, which is not revealed during the hearing is **limited**. Such access is granted to the parties and their legal representatives, to lawyers and to some third parties. The parties to the case and their legal representatives have access only to the

[14] The disclosure of information, which is forbidden by law, is punishable by imprisonment of up to one year or by probation (Article 360 of the Criminal Code).

information concerning the case, in which they are directly involved. Lawyers have unlimited access to information about any criminal case. A third party can be granted access to information about the proceedings only if they have 'legal interest' (*законен интерес*). The information is provided by allowing the persons to examine the case file at the premises of the court or obtaining copies of the relevant documents. The parties and their representatives are also allowed to copy or photograph the documents themselves (Articles 77 and 78 of the Court Administration Regulation).[15]

Procedural legislation does not envisage any specific rules on the **disclosure of information** about the accused person **to the general public or the media**. However, such rules are provided for in the Judiciary Act. All judges, prosecutors and investigators are obliged to keep as 'official secret' (*служебна тайна*) the information, which they have learned in their official capacity and which concerns the interests of citizens, legal entities or the state (Article 211 of the Judiciary Act). The disclosure of such information to a third party or to the public is a criminal offence (Article 284 of the Criminal Code).

Rules on the disclosure of information to the public are included in the section on confidentiality of the **ethics code** of judges and prosecutors. The code proclaims confidentiality as one of the basic principles guiding the professional and personal behaviour of judges and prosecutors. Confidentiality is also linked to the need of protecting the parties to the proceedings (one of which is the accused person) and their close persons from the illegal use of any information or data. The ethics code requires judges and prosecutors to: (1) observe absolute confidentiality in their social communications and private life regarding the information available to them in relation to their work, (2) not use such information in any illegal way, (3) discuss general legal topics without disclosing any details about individual cases or any information, which concerns the personal life of people can harm their interests or reputation. The code allows judges and prosecutors to express their personal opinion before the media on any issues, for which there is no specific restriction in the law (Article 7 of the Code of Ethics of Bulgarian Magistrates).[16]

The ethics code of the Ministry of the Interior obliges police officers not to disclose any official information unless such disclosure is explicitly provided for in a law (Article 71 of the Ethics Code of the Public Officials of the Ministry of the Interior).[17]

Guidelines for disclosing information are included in the manual on the interaction of judicial bodies with media, published in 2015. The manual offers a set of recommendations as to what information can be provided to the media during the different stages of proceedings. During the pre-trial investigation, the manual recommends this information to be limited to the following facts: the investigation has started, investigative actions have been initiated, an accused person has been detained, the court has been asked to decide on the remand measures, the investigation has finished, there is decision of the prosecutor to indict a person or dismiss the charges. The manual also recommends that only the court, after issuing a decision on the remand measures requested by the prosecutor, can disclose information about the accused person. More information about the accused, including a brief description of the crime they are charged with, can be disclosed when the case goes to court. During the trial, the presence of journalists at the hearings should not be restricted, unless the cases are closed to the public or there are other legitimate reasons (e.g. the court room has limited capacity). At the same time, the media need to obtain permission from the judge for making pictures and for using audio or video recording equipment. Even in this case, the handbook recommends the judge, before giving permission, to obtain the consent of all participants in the hearing and to allow

[15] Supreme Judicial Council (2017), Court Administration Regulation, www.lex.bg/bg/mobile/ldoc/2137175771.

[16] Supreme Judicial Council (2009), Code of Ethics of Bulgarian Magistrates, www.vss.justice.bg/page/view/1300.

[17] Ministry of the Interior (2014), Code of Ethics of the Public Officials of the Ministry of the Interior, www.mvr.bg/docs/default-source/structura/96de0a6d-etichen_kodeks-pdf.pdf.

only a brief recording of the opening not exceeding two or three minutes. According to the handbook, it is not appropriate to broadcast the hearings live. The judge is also advised to allow journalists to make pictures outside the court room only if they will not be allowed inside, e.g. because of the limited capacity of the room. The handbook contains specific recommendations regarding the making of pictures or audio or video recording of the parties, including the accused person. Accused persons, witnesses and other parties can be present in pictures or audio or video materials only with the permission of the judge and their own consent. Judges are advised to ban the publication or broadcasting of any texts, drawings or pictures that could reveal the identity of the person concerned.[18]

Similar guidelines, particularly for making pictures or audio or video recordings during court hearings, are included in the **media strategy of the judiciary**, adopted in 2016.[19]

In practice, however, there are cases, when the authorities do not comply with these rules and guidelines, and disclose information about the identity of the accused. Such cases can be found, for example, in official press releases of prosecutor's offices (Box 1).

Box 1: Press releases of prosecutor's offices with different degree of disclosure of personal information about the accused

Sofia City Prosecutor's Office brought charges against a former magistrate and a lawyer (15 January 2018)

Today, 15 January 2018, the Sofia City Prosecutor's Office (SCPO) brought charges against the former president of the Regional Court in Radnevo Evelin Draganov and the attorney-at-law Philip Gorov from the Bar Association in Stara Zagora for attempted concealment of a person, committed in partnership and qualified as a continuous crime, which is criminal offence under Art. 294, para 1, in relation to Art. 26, para 1, and Art. 20, para 1 of the Criminal Code.

The two persons are charged, because there is evidence that between 27.01.2017 and 31.05.2017 they, together and separately, attempted to prevent the criminal prosecution of a person, who had committed a crime – the defendant Luba Petrova, without a prior agreement with her. The proceedings against Petrova, who is prosecuted for documentary and office-related crimes, is pending before the court.

The actions of the two persons consisted of holding meetings and talks with two of the main witnesses against Luba Petrova, during which they had been persuading them to withdraw their testimonies against her. The attempt of the two accused persons remained unfinished, because the two witnesses refused to change their testimonies. At the time of their actions, Evelin Draganov was not a president of the Regional Court in Radnevo anymore.

With regard to both Draganov and Gorov, the remand measure 'regular reporting' was taken.

Upon request by the District Prosecutor's Office – Sliven, the court detained in custody Milan Y., who had committed attempted murder against an 18-year old girl (17 January 2018)

Upon request by the Regional Prosecutor's Office – Sliven, the court detained Milan Y. (22 years old, from Tvarditsa). He is accused of having attempted to kill an 18-year-old girl on 13 January 2018 in the town of Tvarditsa, the act being committed with extreme cruelty and left unfinished for

[18] Supreme Judicial Council (2015), Manual on the Interaction of Judicial Authorities with the Media, pp. 9-19, www.vss.justice.bg/root/f/upload/8/medien_naracnik.pdf.

[19] Supreme Judicial Council (2016), Media Strategy of the Judiciary, Annex 1: Communication Channels and Instruments for Working with the Media, pp. 13-15, www.vss.justice.bg/root/f/upload/8/medien_naracnik.pdf.

reasons beyond his control – a crime under Art. 116, para. 1, item 6, last proposal, in relation to Art. 115 and Art. 18, para. 1 of the Criminal Code.

According to the prosecutor, there is a reasonable suspicion that Milan Y. has committed the crime he is accused of. The representative of the prosecution is convinced that the accused can hide or commit a new crime. He justified his statement referring to the way, in which the crime was committed, as well as his unclear criminal record, which makes him a person with an increased degree of public danger.

The court accepted the prosecutor's arguments and detained Milan Y. in custody. The ruling of the Sliven District Court can be appealed before the Burgas Court of Appeal.

Regional Prosecutor's Office – Pleven detained a person, who had committed a robbery at a gas station (17 January 2018)

Regional Prosecutor's Office - Pleven is investigating a robbery, which happened this night at a gas station in the village of Totleben, Pleven municipality.

On 17 January 2018, about 1.30 a.m. an armed person entered the gas station, threatened the cashier and took 202.00 leva and 313 lottery tickets - all at a total value of 1,072 leva.

The perpetrator of the robbery was established and detained for 72 hours with a decree of the observing prosecutor from the Regional Prosecutor's Office – Pleven. Until the end of today, the Regional Prosecutor's Office – Pleven will file a request to the Pleven Regional Court for imposing the remand measure "detention in custody" on that person.

Investigative actions continue under the direction of the Regional Prosecutor's Office – Pleven.

Source: Public Prosecutor's Office.

In some cases, **accused persons**, who have been found **not guilty**, have the right to request information about the outcome of the proceedings to be **published in the media**. This right is entitled to persons, who have been detained, but the pre-trial proceedings have been discontinued or the case has ended with acquittal. The publication of such information is mandatory when the media has already disclosed details about the case (Article 11 of the State Liability for Damages Act).

3.2. Disclosure of information about police detention

Persons in police detention have the right to make **one phone call** to notify someone about their arrest (Article 74 of the Ministry of the Interior Act). The **police** are also obliged to **inform one person**, pointed out by the detainee (Article 72 of the Ministry of the Interior Act). This person must be notified immediately (Article 15 of Instruction No 8121з-78).

There are **special rules for disclosure of information** as regards some **categories of detainees**.

When the arrested person works for a **public security or law enforcement agency** (the Ministry of the Interior, the Ministry of Defence or the security and law enforcement services), a notification about their arrest must be sent to their employer (Article 45 of Instruction No 8121з-78).

If the arrested person is **another country national**, the police must immediately **notify the Ministry of Foreign Affairs**. The Ministry of Foreign Affairs is obliged to transmit the notification to the respective **diplomatic mission** (either the mission of the person's home country or the mission of another country representing their home country in Bulgaria). If the arrested person is a refugee or an asylum seeker, the notification is sent to the State Agency for Refugees instead of the respective mission. The foreign country national has the right to notify the respective diplomatic mission personally by phone, which is done in the presence of a police officer and an interpreter. However, even when the foreign country national chooses this option, the police officer and the Ministry of

Foreign Affairs remain obliged to deliver the notification to the respective diplomatic mission (Article 22 of Instruction No 8121з-78).

The police are allowed to provide information about the arrested persons to the **media**. This can be done after consulting the police officer, responsible for the arrested person, and without affecting the investigation. Information to the media must be sent in compliance with all applicable rules regarding the rights of the arrested person, the disclosure of classified information and the protection of personal data (Article 56 of Instruction No 8121з-78). The **disclosure of information** and the provision of information to the media can be **restricted** in certain cases upon decision of the police officer responsible for the arrested person. In exceptional cases, when the identity of the arrested person must remain confidential and at the same time this person has to pass through a public area, their anonymity can be protected by a temporary mask or another appropriate means (Article 57 of Instruction No 8121з-78).

4. Legal impact of proceedings on suspects and accused

Criminal proceedings can have an impact on the accused person's **employment status**. There are **no special rules governing the employment contracts of suspects and accused**. In particular, the labour legislation does not explicitly allow the employer to undertake measures against their employees (dismissal, demotion, decrease of salary, etc.) on the grounds that the latter have been **suspected for or accused** of committing a crime.[20]

At the same time, some of the measures, imposed on the accused person can have an impact on the employment contract of the accused. Such a measure is, for example, temporary **suspension from work**. This measure can be imposed only when the person has been charged with a serious intentional crime, committed in relation with their job, when there are sufficient grounds to believe that their position would hamper the performance of a full, objective and comprehensive investigation (Article 69 of the CPC). If the accused person is found guilty, the time of suspension is also deducted from their length of service (Article 352 of the Labour Code and Article 116 of the Civil Servant Act).

Custodial measures also can have an impact on the accused person's employment status. Although the law does not explicitly allow employers to dismiss their employees due to the fact that there is a criminal investigation against them, **detention can lead to dismissal**. If a person has lost their job as a result of detention, but has not been found guilty, the time during which that person has remained unemployed is not deducted from their length of service and contributory service. In such cases, the respective social security contributions are covered by the government (Article 354 of the Labour Code and Article 9 of the Social Security Code).

There are some **positions in the public sector**, mainly in the area of security and law enforcement, for which **accused persons are not eligible to apply**. Thus, for example, accused persons and defendants, charged for committing an intentional crime could not be appointed as public officials at the Ministry of the Interior (Article 155 of the MOIA), as officers and sergeants at the National Service for Protection (article 39 of the National Service for Protection Act), as public officials at the State Agency for National Security (Article 53 of the State Agency for National Security Act), as investigating customs officials at the Customs Agency (Article 10a of the Customs Act), etc. Persons, against whom there is a pending criminal procedure, cannot be enrolled in the military service (Article 141 of the Defence and Military Forces of the Republic of Bulgaria Act).

A person accused of committing a crime cannot perform private security activities. If an accused person applies for a private security license, their application will be rejected. Persons, who have already obtained a license, must have their license revoked if a criminal procedure is opened against them. The same applies for the managers and the members of the managing bodies of companies applying for or having obtained a private security license (Article 21 of the Private Security Operations Act). Persons, against whom there is a pending criminal procedure cannot be employed as private security agents as well (Article 27 of the Private Security Operations Act). Similar rules apply for persons performing operations (production, storage, maintenance, trade, etc.) with weapons, ammunition, explosives and pyrotechnic articles or participating in the managing bodies of companies performing such operations (Articles 17, 37, 58, 61 and 135 of the Weapons, Ammunition, Explosives and Pyrotechnic Articles Act).

Specific **legal restrictions** can be imposed, when the **accused person is a foreign national**. Thus, for example, another country national against whom there is a pending criminal case can have their travel

[20] The employer is obliged to release from work an employee who is summoned by a court or another authority as a party, a witness or an expert (Article 157 of the Labour Code). It is not clear how this rule applies when the employee is summoned as an accused person, because, according to the law, the accused does not become a party to the proceedings until the case goes to court.

documents temporarily ceased (Article 31 of the Foreigners in the Republic of Bulgaria Act). They are also not allowed to apply for Bulgarian citizenship if, at the moment of submitting the application, there is a pending criminal case against them (Article 12 of the Bulgarian Citizenship Act).

Criminal proceedings can have a serious impact on the **accused person's family status**, particularly when the accused is placed in detention. The Criminal Procedure Code stipulates that, when the detained person has children and there are no relatives, who can take care of them, the respective municipal administration must immediately place them in a nursery, a kindergarten or a boarding house (Article 63 of the CPC). Such children, as long as they are considered children at risk will also receive protection under the child protection legislation. At the same time, persons, against whom there is a pending criminal procedure are not allowed to apply for being foster parents (Article 32 of the Child Protection Act).

5. Practical impact of proceedings on suspects and accused

In Bulgaria, persons accused of committing a crime, who are not found guilty, can claim compensation for the damages they suffered during the proceedings. The same right is granted to persons who have been detained in custody or placed under home arrest, when the measure has been subsequently repealed by the court. The procedure for claiming compensation is laid down in the State Liability for Damages Act. Compensations are awarded by the court based on an application filed by the accused person. The applicant has to prove that the damages they claim are caused by the criminal proceedings or the imposed custodial measure respectively.

Each year, there is a **significant number of cases**, in which **accused persons are awarded compensation for being prosecuted and not found guilty**. In 2016 alone, the Public Prosecution Office was convicted to pay compensations totaling almost BGN 2.5 million (approximately EUR 1.25 million). The majority of these compensations (more than 97 % of all cases) were awarded to accused persons, who were either found not guilty by the court (about 73 %) or had their cases suspended (about 24 %) (Table 5).

Table 5: Compensations awarded to accused persons who were not found guilty (2012-2016)

Outcome of proceedings	2012	2013	2014	2015	2016
Number of compensation cases due to acquittal	154	102	241	210	209
Number of compensation cases due to suspension of proceedings	63	86	46	83	68
Number of compensation cases due to unlawful detention	0	29	11	3	4
Number of compensation cases due to execution of penalty beyond the duration specified by the court	4	0	3	1	2
Number of compensation cases due to violation of the right to hearing within reasonable time	-	-	5	5	2
Number of compensation cases due to unlawful use of surveillance	-	-	0	0	0
Total number of compensation cases	221	217	306	302	285
Total amount of awarded compensations (BGN)	2,888,460.00	2,060,197.10	3,651,867.50	2,495,245.07	2,479,721.32

Source: Public Prosecution Office.

The law allows applicants to claim compensation for both pecuniary and non-pecuniary damages.

In practice, **pecuniary damages** are usually related to the expenses for hiring a lawyer, other case-related expenses or loss of income.

Expenses for **hiring a lawyer** and other **case-related expenses** (for example, travel expenses related to the participation in investigative actions or court hearings conducted in another location) often have a serious impact on the accused person. This is so not only because of the **overall amount of such expenses**, but also because of their specific **urgency**. In many cases, persons against whom a criminal case is launched, do not have at their immediate disposal sufficient resources to pay for the case-related expenses. There are examples, in which accused persons had to urgently sell their property to obtain the necessary financial resources on time to cover such costs.

Loss of income is most often the result of the accused person being **permanently or temporarily dismissed from work** or having to take **unpaid leave** to participate in investigative actions, court hearings or other formalities related to the proceedings. Accused persons admit that they prefer not to inform their employer about the proceedings, because they fear they will be either dismissed from work or forced to resign. Thus, to keep their employer unaware about their situation, such persons have taken unpaid leaves to justify their absence from work, when they have been requested to attend investigative actions or hearings.

Box 2: Exemplary case of dismissal from work of an accused public official due to the publication of information about the investigation in the media

On 29 May 2017, a registration judge from the Registry Agency of the Ministry of Justice was arrested and accused of corruption and money laundering. The person was offered money to speed up the registration of a real estate deal and was arrested immediately after taking the money. After the arrest, the police searched the person's home and found about BGN 35,000 hidden in enveloped behind a painting. On the same day, the public prosecution service gave a special press conference on the case, revealing detailed information about the accused person, the criminal activity he was accused for, and the operation for his arrest. Pictures and videos from the accused person's arrest and from the search of his house were also made public.

In the framework of the same police operation, other employees of the Registry Agency were also arrested, but were later released. Information about their identity was not publicly revealed.

As a result of the increased publicity of the case, on the next day, the Minister of Justice also gave a press conference to announce that the arrested registration judge was permanently dismissed from work.

Sources: Dnevnik Daily, Bulgarian National Radio, Trud Daily.

In some cases, the proceedings have had a negative impact on the accused person's **business operations**. Accused persons, who had their own business, have claimed compensation for pecuniary damages related to the loss of clients, loss of professional reputation (especially in cases, in which information was published in the media), restrictions in terms of eligibility for participating in public procurement procedures and even closing of the entire business.

The negative impact of proceedings on the **ability of the accused persons to practice their profession** is another argument often used for claiming compensation. An example in this respect is the case of an accused taxi driver, who was deprived of their taxi license. As result, the person lost their regular income, but continued to pay for the car, which was bought on credit.

Missed opportunities for getting a job are also among the reasons for claiming compensation. In such cases, accused persons claimed compensation because they had not accepted profitable job offers, sometimes in another city or abroad, due to the fact that they had to regularly participate in investigative actions or court hearings. The public disclosure of information about the case is seen as another serious obstacle for getting a job. Accused persons, whose cases were published in the media, claimed compensation for the difficulties they faced in finding a job due to their damaged reputation. This was particularly relevant for persons pursuing careers in areas of increased publicity, like politics.

Compensation cases also reveal the negative impact of proceedings on the **relations between the accused person and their family**. Among the claim for compensation, there are some, in which the applicants argue that the proceedings against them have led to estrangement between them and their spouse and, sometimes, to divorce. In many such cases, the accused person's children have been taken away by the other parent or their relatives and the regular contacts between them and the accused have been restricted or, sometimes, completely discontinued. Asked about the motives for their actions, such persons usually explained that they wanted to keep the children away from the

criminal investigation against their parent, to prevent them from being influenced by the accused (often presuming the accused person's guilt) or to protect them against the negative attitudes of the community. Many cases show, that in such situations the children often blame the accused person about their family's breakdown. There are also cases where the accused person has worsened their relations with more distant relatives, who have learned about the criminal investigations against them, because they have been questioned as witnesses or their homes have been searched. In one such case, the accused person, who was under pre-trial investigation for 13 years, claimed that her partner refused to marry her while the case was pending, because he was afraid that, if they were married and she was convicted, he, as her husband, would have some of his own property confiscated.

Box 3: Impact of proceedings on family links

"The applicant argues that they have suffered non-pecuniary damage as a result of their unlawful accusations, including damaging their reputation in the society, among their friends, relatives and colleagues. The relatives, who have loaned them money, have been interrogated many times, including in a court hearing. They felt extremely uncomfortable with them. Part of the investigative actions and the inquiry performed by the Regional Prosecutor's Office in Varna were carried out by police officers in the town of Dimitrovgrad and thus became known to the residents of the town. D.M. grew up and graduated with honours in this town and her reputation was severely damaged. R.R. was also seriously calumniated in the society. The latter was caring, in the town of Dimitrovgrad, for the child R.M. till the age of 13 years. They restricted their social contacts, experiencing insult and shame, and they were condemned as criminals and people who committed an immoral and unacceptable act for society. Their feeling of freedom and honour was also greatly impacted when they had to endure the police (forensic) registration that seriously disturbed and upset them. The summoning to the police and the court in Varna was always for the three of them. For that reason, when travelling to Varna, they had to take the child with them. Once cheerful, the child became introverted and ashamed of their classmates. Their authority as parents was severely impaired. They decided to leave all together for Germany and live there. During all these years, they could not go on holiday, as all their annual leaves were related to trips back to Bulgaria for questionings at the police or in court. The criminal charges and the trial have also reflected on their family life. Relationships in their family have exacerbated and worsened. R.R. have not received support on the part of her husband, which led to an irreversible rift in their relationship. Her husband did not withstand the tension and negative emotions, left their family home and they got divorced. The criminal prosecution, which lasted for almost years, has placed them in a condition of constant stress, worry and anxiety."

Source: Regional Court of Varna, Decision No 5222 of 13 December 2017 on civil case No 10824/2017.

Many accused persons have claimed compensation for non-pecuniary damages related to the negative impact of proceedings on their **community links and social life**. In most of these cases, the damages are somehow related to the spread of information about the investigation within the community and in the society in general. This is particularly relevant for cases, for which information about the proceedings has been published in the media. Accused persons have argued that, once the information about their case is disclosed, they often become targets of whispering, mockery or open insults by random community members, neighbours, or service providers.

In other cases, accused persons have noticed that some of their close friends or neighbours are trying to avoid them and not to communicate with them. This often happens when friends or neighbours are somehow involved in the proceedings, for example by being present during investigative actions or by being questioned as witnesses.

A curious example of a negative impact on social life is the case of an accused person, whose gun license was revoked during the investigation, which led to the revocation of their hunting ticket and the inability to sustain social contacts with other hunters.

There are also several cases of accused persons claiming that the public disclosure of information about their cases prevented them from participating as candidates during elections. This is also a consequence of damaged reputation, because Bulgarian legislation does not restrict the participation of suspects and accused in elections.

Box 4: Impact of proceedings on private and social life

"During all these years, as a result of the criminal proceedings, the applicant went through numerous humiliations and sufferings. The actions of the prosecutor's office have caused him non-pecuniary damages, consisting of highly negative psychic experiences. Although he knew that he had not committed a crime, he was treated as a criminal and was subjected to criminal prosecution, having been charged with committing the crime. From the day when he was charged until the day of his acquittal, he suffered from extremely severe stress, which affected not only him, but also his relations with his closest people. He drastically lost weight of more than 10 kg, and became rude, gloomy, irritable and startling. He was horrified that he might not be acquitted, even though he was innocent, and might leave his wife alone to take care of their daughter, a student in the R.R. high school in the city of S., because his criminal record would state 'convicted', which was unacceptable for starting a new job. His former colleagues from T. Ltd, as well as the manager of the company and his father, were all gossiping that he was a thief and had appropriated money from the company, which affected his reputation in society, many friends began to doubt that he was really a criminal and to avoid him, not wanting to communicate with him. He began to live in worry of these proceedings, and felt fear, anxiety, depression and shame. He became introverted, unsocial, showing irritability, which disrupted the normal communication with his close persons and his family. He started avoiding his friends and acquaintances, since he did not want to give explanations; he felt insulted and humiliated. Although he was acquitted, these unjustified accusations, brought and sustained against him by the prosecutor's office, inevitably reflected on his personal dignity and his authority and he lost faith in the prosecution. Those years, in which criminal proceedings were pending against him, his involvement as an accused and his bringing to court were the worst years in his life. Moreover, during all these years he could not leave the territory of the Republic of Bulgaria, due to the mandatory reporting imposed on him by the prosecutor's office, he could not leave the town without obtaining permission in advance, which further led him to feels embarrassed and ashamed, and for all these years he never left the city."

Source: District Court of Stara Zagora, Decision No 406 of 7 December 2017 on civil case No 1398/2017.

In a number of cases, accused persons claimed compensation for different **health problems** caused by the proceedings against them. Most often applicants argue that this is due to the stress they have experienced during the investigation and the negative impact of proceedings on their private, professional or social life. Among the **physical health problems**, which are usually mentioned by applicants, are high blood pressure, diabetes, significant loss of weight. In one such case, the accused person claimed that he had suffered from a heart attack because of the stress caused by the investigation. **Emotional and mental health issues**, such as insomnia, irritability and anxiety of what is going to happen if the case ends with a conviction, are also seen by applicants as consequences of the proceedings.

6. Assessment of the impact of proceedings by the competent authorities

In Bulgarian legislation, there is no general provision obliging the authorities to collect, review and assess specific information about the suspects and accused before making a decision that might affect them. However, such provisions exist in relation to the **imposition of remand measures**. The law obliges the competent authority, before deciding on the remand measure, to take into account the accused person's health condition, profession, age and other relevant data (Article 56 of the CPC). Information about the accused person is also taken into account when there is an appeal against the imposed remand measure or when there is a request for the substitution of a remand measure with a more lenient one.

As a rule, Bulgarian courts always assess the **health condition** of the accused person before deciding which remand measure is most appropriate in the particular case or whether the initially imposed measure should be replaced with a more lenient one. As a rule, when assessing the health condition of the accused, the court seeks to establish whether they suffer from a specific illness or other health problem that either is incompatible with detention or the medical staff of detention facilities lacks the capacity to take care of such persons. In practice, there are very few cases where the court actually found the health condition of the accused as a relevant factor. In most cases, the court discussed the health condition of the accused only to conclude that it was not an obstacle for imposing the chosen measure. As a result, even serious diseases like cancer or transmittable diseases like AIDS and Hepatitis B and C were not found a good reason for not placing the accused person in detention. By way of exception, there are also cases where the court considered the health condition of the accused as a relevant factor justifying the substitution of the remand measure with a more lenient one (Box 5).

Box 5: Assessment of health condition when replacing home arrest with bail

> "In the present case, it is established that the accused has a scheduled date for examination by the Labour Expert Medical Commission and that he has been going to medical examinations, for which he has been issued ambulatory documents. The court, taking into account the illness and necessity of treatment as well as the good procedural behaviour demonstrated by the lack of violations of the imposed remand measure, finds that the home arrest measure prevents the accused from being treated and the right to health is a fundamental human right, which is subjective, constitutional and internationally recognised. In addition, the necessity to seek permission from the pre-trial authorities every time he leaves his home disconnects them from the working process. In view of the above, the measure should be changed to a lighter one, namely a bail of BGN 200, which is appropriate in view of the fact that the accused receives work benefits and has income."

Source: Regional Court of Kula, Ruling No 6 of 7 April 2017 on criminal case No 70/2017.

The **employment status** of the accused is often discussed by the court, but is rarely taken into account as a decisive factor. On the one hand, the fact that the accused person is unemployed is often assessed as a negative factor increasing the risk of the accused person to either abscond or re-offend. On the other hand, employment is rarely considered as a strong positive factor justifying the imposition of non-custodial instead of custodial measure. On the contrary, there are cases where the courts have imposed detention on persons who are employed, arguing that the fact that they have a job is irrelevant and that their right to work is legitimately restricted by the custodial measure.

However, there are also cases where the employment of the accused person played a decisive role in the selection of the remand measure (Box 6).

Box 6: Assessment of employment when replacing detention with bail

> "Indeed, the accused person's criminal record reveals that he was repeatedly convicted, indicating a higher degree of public danger. Nonetheless, from the testimony of witness B. it becomes clear that the witness is the owner of a restaurant in Pomorie and is pleased with the work of the accused in the preparation of the establishment for the summer season and only the detention of the latter prevented the witness from concluding a contract with him for the summer season. The witness points out that, if possible, he would hire the accused M. to work at his establishment, as the accused has demonstrated good labour skills and a willingness to work. The court finds that, despite the overwhelming criminal record of the accused M., the latter, in the very real opportunity to earn money from a job he wants during the summer season, would refrain from criminal activity and his employment could have a positive impact on the formation of long-term working habits."

Source: Regional Court of Pomorie, Ruling No 115 of 3 July 2017 on criminal case No 246/2017.

The age is assessed mainly when the accused person is a juvenile or, less often, an elderly person.

Other relevant information, collected and assessed by the courts, include data about the family status of the accused and about the presence of small children or other family members (parents, grandparents, spouse), for whom the accused person takes care.

Box 7: Assessment of the family status and children when determining the amount of the bail

> "The fact that the accused person takes care of three young children under 14 years of age has been taken into account, assessed and compared with the [other facts of the case] described above. The cost of raising and educating the three children of the accused is parental care and duty, but, as the accused points out, it is not only his responsibility, but also his wife's, although it is mentioned that she does not receive regular income. The court also considers that the accused should have taken into account the fact that he was the father of three children before becoming involved in the act under investigation. It is true that children need their father's care, but his actions and social danger characterise him not as a caring parent, but, on the contrary, as one giving a very negative example that could affect his children in the future."

Source: Regional Court of Pazardzhik, Ruling No 94 of 15 February 2018 on criminal case No 242/2018.

The fact that the accused person has children is interpreted differently by the courts. In some cases, this circumstance was found irrelevant, in other cases it was assessed as a rather negative factor in the sense that the accused was viewed as a bad example for their children (Box 7), while there are also cases where children were considered as a decisive factor for not placing the accused in detention (Box 8).

Box 8: Assessment of the family status and children when replacing detention with mandatory reporting

> "From the evidence thus produced, it can be concluded that there is a change in the circumstances relating to the family status of the accused, namely a new fact was established which was not known at the time of the initial imposition of the measure - that the accused has a small child being raised currently by the mother, who has difficulties in caring for the child alone, and there is a need for the accused to assist the mother in raising the child. It is also established that the pre-trial proceedings are now over and there is no danger that the accused may impede the gathering of evidence. In this case, the court finds that the circumstances established in connection with the paternity of the accused and the completion of the pre-trial proceedings should be considered as new circumstances justifying the substitution of the detention in custody imposed on the accused with a more lenient measure. The court finds that in the present case, in order to achieve the purpose of the remand measures provided for in Article 57 of the CPC, and taking into account the

circumstances under Article 56, Para (3) of the CPC concerning the family status of the accused, the appropriate measure would be mandatory reporting; it will sufficiently ensure the participation of the accused in the criminal proceedings and, on the other hand, will guarantee the provision of the necessary care to the child, while the need to look after his child is also a factor that will influence the accused in a positive direction and motivate him not to abscond or commit another crime."

Source: Regional Court of Pomorie, Ruling No 43 of 2 March 2017 on criminal case No 84/2017.

Overall, the review of court decisions clearly shows that, when deciding on the imposition or substitution of remand measures, Bulgarian courts focus mainly on assessing the dangerousness of the accused person and the risk of hiding or re-offending. Much less attention is paid to the personal condition or the social status of the accused and, even when such factors are considered, they are most often disregarded as irrelevant when making the final decision. However, there are also individual cases, in which such factors as health condition, family status or employment have been duly examined by the court and have had an impact on the final decision.